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# State v. Schultz Appellant's Reply Brief Dckt. 36445

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 36445
	)	
v.	)	
	)	
CHRISTOPHER RAY SCHULTZ,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	

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COPY

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CASSIA

HONORABLE MICHAEL R. CRABTREE  
District Judge

MOLLY J. HUSKEY  
State Appellate Public Defender  
State of Idaho  
I.S.B. # 4843

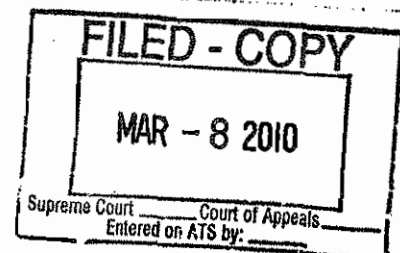
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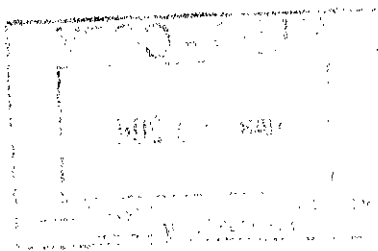
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## **TABLE OF AUTHORITIES**

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## STATEMENT OF THE CASE

### Nature of the Case

Christopher Ray Schultz appeals from the Memorandum Decision and Order Denying Defendant's Motion to Withdraw Plea of Guilty. He asserts the district court erred denying his motion to suppress because he proved, by the preponderance of the evidence, a manifest injustice existed because the State breached a plea agreement made with Mr. Schultz in juvenile court. Mr. Schultz submits this Reply Brief to provide additional authority in support of his claims.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Schultz' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

### ISSUE

Did the district court err when it denied Mr. Schultz' motion to withdraw his guilty plea?

## ARGUMENT

### The District Court Erred When It Denied Mr. Schultz' Motion To Withdraw His Guilty Plea

#### A. Introduction

Mr. Schultz submits this Reply Brief to provide additional support for this Court to hold that the district court erred when it denied his motion to withdraw his guilty plea. Generally, the State argues (1) that a stated "stipulation" is not sufficient to constitute a plea agreement, (2) no cases exists to support Mr. Schultz' argument that an ambiguity as to whether an agreement was actually reached by the parties, the court should favor in finding an agreement, and (3) no authority exists to require a prosecutor to correct a misunderstanding of the defendant's understanding of the agreement. Although Mr. Schultz contends he provided ample authority in his opening brief, he submits this Reply Brief to provide additional authority recently published by the Idaho Supreme Court.

#### B. A Plea Agreement Existed And, If The Stipulation Was Not An Agreement As It Was Conveyed To The Court, The Prosecutor Had A Duty To Correct It Because The State Received A Benefit

Mr. Schultz submits that the district court erred denying his motion to withdraw his guilty plea. Had the district court applied the proper standard, it would have found the existence of the agreement and that the State breached the agreement.

"[I]t is a general rule of law that silence and inaction, or mere silence or failure to reject an offer when it is made, does not constitute an acceptance of the offer." *State v. Peterson*, 2010 WL 424355, p. 4, Docket No. 35786 (February 8, 2010) (quoting *Vogt v. Madden*, 110 Idaho 6, 9, 713 P.2d 442, 445 (1985)). However, the *Peterson* Court

recognized that there is a generally accepted exception to the rule which is when the State takes the benefit of the agreement with a reasonable opportunity to reject the agreement. *Id.* (quoting Restatement (Second) of Contracts § 69 (1981).)

Here, as argued in the opening brief, Mr. Schultz appeared in open court and listened to his attorney recite the agreement on the record, wherein he would be waived into adult court and the State would limit its recommendations. (#33000, Tr. 10/05/2005, p.3, L.23 – p.4, L.5.) The district court specifically asked Mr. Schultz if the stated terms constituted his agreement to which Mr. Schultz responded in the affirmative. (#33000 Tr. 10/05/2005, p.3, Ls.22-24, p.4, Ls.21-24.) The State stood silent and did not correct the stated agreement. (Tr., p.53, Ls.18-22, p.57, L.2 – p.57, L.9.) The State was receiving a benefit and, therefore, its silence constitutes an agreement to the stipulation.

C. Any Ambiguity In The Plea Agreement Must Be Resolved In Mr. Schultz' Favor

Assuming that there is ambiguity in the plea agreement, any ambiguity should have been resolved in Mr. Schultz' favor. The district court erred resolving the ambiguity in the State's favor.

Ambiguities in a plea agreement are to be interpreted in favor of the defendant. "As with other contracts, provisions of plea agreements are occasionally ambiguous; the government 'ordinarily must bear responsibility for any lack of clarity.'" *United States v. De la Fuente*, 8 F.3d 1333, 1338 (9th Cir. 1993) (quoting *United States v. Read*, 778 F.2d 1437, 1441 (9th Cir. 1985)). "[A]mbiguities are construed in favor of the defendant. Focusing on the *defendant's* reasonable understanding also reflects the proper constitutional focus on what induced the *defendant* to plead guilty." *De la Fuente*, 8 F.3d at 1337 n.7.

*State v. Peterson*, 2010 WL 424355, p. 4, Docket No. 35786 (February 8, 2010). In the opening brief, Mr. Schultz argued consistent with the most recent articulation of the law

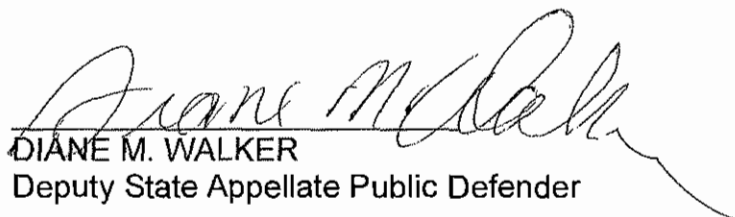


from the Idaho Supreme Court in the *Peterson* case. In the opening brief, Mr. Schultz argued, “[t]he government is held to the literal terms of the agreement, and ordinarily must bear responsibility for any lack of clarity.” *Thomas v. I.N.S.*, 35 F.3d 1332, 1337 (9<sup>th</sup> Cir. 1994). Here the State asks this Court to apply just the opposite. (See Respondent’s Brief, p.11.) Applying the correct standard, this Court should reverse the district court’s denial of his motion to withdraw guilty plea.

#### CONCLUSION

Mr. Schultz respectfully requests that this Court reverse the district court’s order denying his motion to withdraw his guilty plea.

DATED this 8<sup>th</sup> day of March, 2010.

  
DIANE M. WALKER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8<sup>th</sup> day of March, 2010, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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